



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 13, 2015

Sara Urakawa  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

Re: Your Request for Advice  
**Our File No. A-15-115**

Dear Ms. Urakawa:

This letter responds to your request for advice regarding your duty under the conflict of interest disclosure provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### QUESTIONS

1. As an attorney working for the California Department of Insurance, will you be required to report notary payments on your Statement of Economic Interests (“Form 700”)?
2. Who will be considered the reportable source of the fees?

### CONCLUSIONS

1. Yes. Since title insurance companies are regulated by the Department of Insurance, the Department’s conflict of interest code requires that you report the income on your Form 700.
2. Because you will be an independent contractor with title insurance companies, they are the sources of your notary income. You may also have to report individual sources of income if you derive \$500 or more from any other individuals to whom you provide notary services.

### FACTS

You are currently an attorney with the California Department of Insurance. Your job duties do not include licensing, oversight or enforcement of underwritten title companies, title insurers, or controlled escrow companies (collectively “title insurance companies”).

You are planning to take the Notary Public Exam in order to become a licensed notary public regulated by the California Secretary of State.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

As a notary public, you will notarize documents on your personal time and not in your capacity as a state employee. You will contract with title insurance companies to notarize documents in connection with real property title transfers or refinancing of existing loans secured by real property. You do not hold any ownership interest, direct or indirect, in the title insurance companies. You will not receive preferential treatment for obtaining notary jobs due to your employment with the Department of Insurance.

The notary services are paid through fees provided by the parties to the transaction, such as buyers, sellers, or borrowers. The funds will be held in an escrow or trust by title insurance companies, who then pay you once the transaction is complete. They will also issue you an IRS form 1099 at the end of each federal tax year.

### ANALYSIS

The Act's conflict of interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a "financial interest." (Section 87100.)

In addition, certain state and local public officials must file periodic Statements of Economic Interests (Form 700) disclosing those personal assets and interests that may be affected during the performance of their official duties. (Sections 87200 - 87350.) Public officials who are required to file statements of economic interests are either identified in Section 87200 (statutory filers) or designated in an agency's conflict-of-interest code (designated employees or code filers). (See Sections 87300 and 87302.)

Your department's conflict of interest code requires you to disclose sources of income that meet threshold requirements. Generally, any source of income aggregating \$500 or more in a year must be reported.

However, if the income is generated through a regular "business entity" in which you have invested \$2,000 or more, then only sources of income aggregating \$10,000 or more must be reported. (Regulation 18730(b)(7)(C)(2).) Business entity, as defined under Section 82005, means "*any organization or enterprise operated for profit*, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association."

Therefore if you are providing notary services independently, whether to title insurance companies or to individuals, you must report them if the income received from a source is \$500 or more. Alternatively, if you have invested \$2,000 or more in a notary business such as a sole proprietorship, then you only need to report clients who are a source of income aggregating \$10,000 or more. From the facts you stated, it does not appear that you intend to invest \$2,000 in your notary business. If you are only contracting with the title insurance companies to provide notary services, you will need to report sources of income of \$500 or more.

The Act defines "income" as a "payment received." (Section 82030.)

Turning to your second question, we must now determine who to identify on your Form 700 as the source of income under the provisions of Section 87207.

In the past, we have found that, with respect to an official's income as an independent contractor, the contracting entity is the *sole* source of that income. (*Scott* Advice Letter, No. A-95-255; *Tunnel* Advice Letter, No. I-88-123; *Hart* Advice Letter, No. A-83-264.) In the *Scott* Advice Letter, a doctor contracted with a medical group to oversee the medical education program at a hospital. The hospital had contracted with the medical group for the medical education program, thus paying for the program and indirectly, the doctor's income. However, because the hospital had no control over the education program or the physicians providing the education services, we determined that the doctor's source of income was the medical group, rather than the hospital.

Similarly, in the *Tunnel* Advice Letter, a roofing contractor had entered into a subcontract with a developer to work on a construction project for the City of Santa Maria. While the City paid for the building and roofing services, we determined that the developer was the source of income to the contractor, even though the contractor had provided his roofing services to the City. The developer determined who would be hired to work on the project and was the party who coordinated with the contractor.

Here, you are contracting with title insurance companies to provide notary services for potential buyers, sellers, and borrowers. While payment for your services is derived from funds paid by the clients, you are contracting directly with the title insurance companies and the buyers and sellers/borrowers exercise no control over the choice of notary. Therefore, title insurance companies are the sources of your notary income.

As you mentioned in your letter, the Department of Insurance regulates title insurance companies under California Insurance Code Sections 12340.3, 12340.4, and 12340.6. As such, your notary income is from sources subject to the regulation of the Department and must be reported on your Form 700 Statement of Economic Interests.<sup>2</sup>

Please note that if you are providing notary services to individual clients as well, you may have to report them if your income is \$500 or more, depending on whether the individuals have been subject to regulation, licensing, enforcement, or oversight by or under the jurisdiction of the Department of Insurance within the preceding 24 months.

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<sup>2</sup> Specifically, under the conflict of interest code adopted by the California Department of Insurance, all attorney positions are designated in Category 2. Designated positions in Category 2 are required to report investments, business positions in business entities, and income from sources which, "within the preceding 24 months, have been subject to regulation, licensing, enforcement, or oversight by or under" the jurisdiction of the Department of Insurance.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Kelly Liang  
Intern, Legal Division

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